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February 20, 2002

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Re: **Ex Parte Notification**
.GN Docket No. 00-185/- Inquiry Concerning High-Speed Access
to the Internet Over Cable and Other Facilities

Dear Mr. Caton:

On Tuesday, February 19, 2002, Randall D. Fisher, Vice President and General Counsel of Adelphia Communications Corporation ("Adelphia"), and Seth A. Davidson, counsel for Adelphia, had separate meetings regarding the above-referenced proceeding with the following Commission personnel: Stacy Robinson, Matthew Brill, and Jennie Berry (Office of Commissioner Abernathy); Susanna Zwerling (Office of Commissioner Copps); Catherine Crutcher Bohigian (Office of Commissioner Martin); and Susan Eid (Office of Chairman Powell). During these meetings, we discussed Adelphia's experience with local regulation of cable modem service and the policy and legal grounds supporting the imposition by the Commission of restraints on non-federal regulation of cable modems service should it be classified as an "information service." An outline of Adelphia's position, which was provided to the participants in each meeting, is attached hereto.

Pursuant to Section 1.1206(b) of the Commission's rules, an original and one copy of this letter and the attachment thereto are being submitted to the Secretary's office for inclusion in the record of the above-referenced proceeding and a copy is being provided to each of the

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participants in the meetings. If there are any questions regarding this matter, please communicate directly with the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Seth A. Davidson', with a stylized flourish at the end.

Seth A. Davidson

cc: Stacy Robinson
Matthew Brill
Jennie Berry
Susanna Zwerling
Catherine Crutcher Bohigian
Susan Eid

CABLE MODEM NOI:

The Commission Should Adopt Clear Restraints on State and Local Regulation

Adelphia knows from first-hand experience that state and local governments will seek to use their cable franchising authority to impose intrusive and discriminatory regulatory obligations on cable modem service providers, including second franchise obligations, franchise fee obligations, and a variety of other alleged “consumer protection” requirements. We strongly urge the Commission to resolve the Cable Modem NOI by adopting clear policy determinations that promote the development and deployment of broadband services and technology by minimizing regulation at all levels of government.

- **Scope of proceeding.** As the NOI plainly contemplated (*see* paragraph 14), the final outcome of this proceeding should be the adoption by the Commission of policy statements addressing both the regulatory classification applicable to cable modem service and the regulatory implications of the chosen classification.

➤ **Regulatory classification.** The Commission recently announced that it had “tentatively” concluded that wireline broadband Internet access service should be classified as an “information service” and that the transmission component of such service is “telecommunications” not a “telecommunications service.” Assuming that the Commission similarly concludes that cable modem service should be classified as an “information service,” there also should be an express acknowledgement that it is provided on an interstate basis and that it is delivered via a cable system platform that is not a “telecommunications service.”

➤ **Regulatory implications.** The Commission should assert its plenary jurisdiction over cable modem service, adopting policies designed to fulfill Congress’ intent that broadband should exist in a regulatory environment that limits regulatory uncertainty by preventing unnecessary or unduly burdensome regulatory costs. Among others, these policies should include:

- ✓ **No “forced” access.** No level of government should be permitted to impose “forced access” obligations on cable modem service.
- ✓ **No local franchising regulation.** Local franchising regulation (whether implemented at the municipal or state level) should not apply to the provision of cable modem service: in particular, there should be no obligation to obtain a franchise to provide cable modem service over a franchised cable system and no franchise fee on cable modem service revenue (*see* 47 USC §543(b)(1) (“franchising authorities may not establish requirements for...information services”; 47 USC §542(b) (limiting franchise fee that can be imposed on cable operator to 5% of gross revenues derived from the provision of “cable services”)). Similarly, local franchising authorities should be barred from using the franchise renewal process as a vehicle for imposing regulatory obligations on the provision of cable modem service.

- ✓ **Nationwide application of federal policies.** In order to ensure that the Commission's determinations regarding the classification and regulation of cable modem service are part of a comprehensive and consistent national broadband policy, those determinations must apply nationwide.
- **Finality of decisions.** It is imperative that the resolution of the Cable Modem NOI provide as much regulatory guidance and certainty as possible. In the absence of guidance from the Commission, cable operators and state and local governments will become embroiled in controversies that almost certainly will result in inconsistent judicial decisions, undermining the goal of a consistent national broadband policy and impeding the deployment and development of new technologies and services.
- **Framework of rulemaking proceeding.** If the Commission determines that a separate rulemaking proceeding is needed to resolve all of the issues raised by the NOI, the Commission should frame the NPRM in a manner that protects cable modem service from burdensome and intrusive regulation by state and local governments. As the Commission recognized in the recently released Wireline Internet Access NPRM, the 1996 Telecommunications Act established that broadband policy is a matter of national concern and that the Commission is under a mandate to "promote competition, deregulation and innovation wherever possible in the communications market."
 - **Tentative conclusions.** The NPRM should include tentative conclusions regarding the major issues raised. For example, if the Commission seeks comment on the appropriate regulatory classification of cable modem service, the NPRM should articulate a tentative classification that binds state and local governments during the pendency of the rulemaking.
 - **Interim preemption/freeze with regard to state/local regulation.** The NPRM should place the burden squarely on those who would advocate state and/or local regulation of cable modem service to demonstrate to the Commission that there are market failures requiring government intervention and that state/local regulation will advance the national goal of maximizing regulatory certainty and minimizing regulatory costs. In the meantime, the Commission should freeze state/local regulation of cable modem service. (See paragraph 62 of Wireline Internet Access NPRM, requesting comment on preemption of state regulation).